

STATE OF HAWAII'I

VS.

Respondent.

HEARINGS EXAMINER'S FINDINGS
OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER;
APPENDIX A

The Executive Director asserts that on or about October 2005, when Complainant Elaine Bowes attempted to rent a unit owned by Respondent Michael Kakar that he abused his power as the landlord and owner of the rental unit located at 341 Lanikila Street, Kapaa, Kauai, Hawai'i,

and subjected Complainant to unwelcome sexual conduct and sexual harassment. As a result, Complainant was harmed by unlawful discrimination in a real property transaction on the basis of sex within the meaning of Hawai'i Revised Statutes (H.R.S.) §515-3, and Hawai'i Administrative Rules (H.A.R.) 12-46-305.

Respondent did not participate in the hearing process and made no formal denial on the record. During the investigative process Respondent did make a general denial to the investigator.

Having reviewed and considered the evidence and arguments presented at the hearing together with the entire record of these proceedings, this Hearings Examiner finds and concludes that Respondent discriminated against Complainant on the basis of her sex in the terms and conditions of a real estate transaction and recommends that Complainant be awarded \$500 in compensatory damages, \$5,000 in punitive damages, and further declaratory and equitable relief. It is also recommended that Respondent be fined \$500 for failure to respond to orders of the Hearings Examiner.

II. FINDINGS OF FACT¹

1. Complaint Bowes is now a 66 year old female who in October 2005 had moved back to Hawai'i from California and began looking for private rental housing on the island of Kauai. Complainant intended to pay for her new rental with a Section 8 housing voucher obtained from the U.S. Department of Housing and Urban Development. (Tr. at 10; Ex. 5 at 1 and Ex. 7 at 1)

As a preliminary matter, this Hearings Examiner has considered the proposed findings of fact and conclusions of law filed by the Executive Director as well as the post hearing arguments filed. To the extent that the Executive Director's proposed findings of fact are in accord with the findings of fact stated herein, they are accepted, and to the extent that they are inconsistent, they are rejected. In addition some of the proposed findings are omitted because they are irrelevant or not necessary to determine the material issues in this case.

To the extent that the following findings of fact also contain conclusions of law, they shall be deemed incorporated into the conclusions of law.

2. On or about October 9, 2005, Complainant responded by telephone to an advertisement in The Garden Island newspaper for the rental of a housing accommodation and made arrangements by telephone with Respondent to view the property located at 341 Lanakila Street, Kapaa, Kauai, Hawaii, 96746 (hereinafter "subject property"). (Ex. 6², Ex. 23 at page 11, Nos. 170,172, 174-75³; Tr. at 11; Ex. 5 at pg 3)

3. The dwelling units on the subject property included the subject advertised rental unit of 341B (hereinafter "subject rental unit") which is located away from the street in the back of the housing lot of the subject property, behind the main dwelling unit fronting Lanikila Street which in October 2005 was the residence of Respondent. (Ex. 8 and 9)

4. On or about October 9, 2005, Complainant first spoke on the phone with Respondent and arranged to meet with Respondent in front of his place of business on or about October 13, 2005. Complainant drove them both to inspect the subject rental unit. After her inspection of the subject rental unit, Complainant advised Respondent she was interested in renting the unit but could not pay for the full advertised monthly rental of \$1,100. Complainant indicated that her Section 8 voucher limited her to \$900 per month. Her intent in the rental negotiation was to value her excellent landlord references and her ability to take excellent care of the subject property. Respondent rejected the lower rental amount indicating the rental price was firm and could not lower the advertised rental amount. (Tr. at 19; Ex. 5 at 3; Ex 7 at 1, Ex. 23 at 11)

5. As a result of the first communication with Respondent during the first inspection of the subject rental unit, Complainant understood and expected that Respondent was not willing to rent to her because she could not pay the advertised rental amount. (Tr. at 25)

6. Two weeks after the initial inspection, on or about October 26, 2005, Respondent telephoned Complainant and invited her to second viewing of the subject rental unit. Complainant agreed to a second viewing because at the time, she had not yet found permanent rental housing and Respondent confirmed the subject rental unit was still unrented. (Tr. at 26; Ex. 7 at 1-2; Ex 11 at 5-6)

² Advertised rental at phone contact 346-1007.

³ Bowes cell telephone contacts to rental contact number 346-1007

7. On or about the same day of the second viewing invitation from Respondent, Complainant appeared at the subject property for a second rental inspection. The two met in front of the subject property and proceeded to walk back to the subject rental unit for a second inspection of the subject rental unit. (Tr. at 28; Ex. 5 at 3)

8. After her brief second viewing of the subject rental unit, Complainant walked toward Lanikila Street, the front of the property, while talking with Respondent. Respondent invited Complainant into his residence located on the subject property, the same lot as the subject rental unit. Complainant accepted the invitation after repeated invitations by Respondent and followed Respondent into his residence. (Tr. at 30)

9. Complainant agreed to enter Respondent's home because she did not wish to appear rude and she was interested in renting the subject rental unit. After she entered Respondent's home, he showed Complainant a room he had remodeled for his wife's use as a yoga studio and Respondent offered Complainant a glass of wine, which Complainant declined. (Tr. at 31-32).

10. After Complainant viewed the remodeled yoga area of Respondent's residence, Respondent invited Complainant to follow him down the hall to a bedroom to view a photograph of his wife. Once in the bedroom Respondent sat down on the bed and encouraged Complainant to join him on the bed by patting the bed with his hand repeatedly and saying that it was very comfortable. (Tr. at 36)

11. Complainant viewed the photograph of Respondent's wife and declined to join Respondent on the bed. Complainant believed Respondent's request to be an invitation for sexual conduct which created a fear for her physical safety. She left the bedroom and returned to the front room at the end of the hallway. (Tr. at 38)

12. Respondent followed Complainant complimenting her on her physical appearance. When Complainant informed Respondent that she was 62 years of age, Respondent did not stop and made further comments on her physical appearance that suggested Respondent was physically and sexually attracted to Complainant. (Tr. at 39, 44)

13. In the front room Respondent again offered Complainant a glass of wine and made another invitation to sit down next to him, patting his hand on the couch that Complainant

believed to be a continuation of the invitation for sexual conduct. Complainant refused to sit on the couch stating that their relationship was "strictly business". Respondent's tone of voice and conduct appeared to Complainant to become increasingly angry and belligerent. Complainant felt both humiliated and fearful. (Tr. at 42-43)

14. Respondent remained on the couch and while studying Complainant from head to toe, told Complainant that the rent was flexible and that he could lower rent, and could make it work for her. (Tr. at 42, 44)

15. Complainant continued toward the exit and Respondent in an angry tone conceded that he had all the sex he wanted including sex with married woman at work. He reminded Complainant that there were other people interested in renting the subject rental unit. (Tr. at 44)

16. As Complainant continued to walk toward the front door of the house, Respondent asked her "When was the last time you had sex?" Complainant exited the subject property immediately fearful that Respondent's conduct would escalate and her physical safety would be in jeopardy. (Tr. at 45)

17. On November 1, 2005, Complainant informed her case worker with the county housing office, Sandy Adachi, that a potential landlord, Respondent, had made inappropriate sexual comments and innuendos. Complainant was referred to the Kauai county housing office equal opportunity officer. (Tr. at 45)

18. Civil Rights Investigation supported that Ms. Suzanne Pearson and Sherry Majewski, other potential lessors of the subject rental unit, experienced similar conduct from Respondent. (Tr. at 80, 120, Ex. 18)

19. Complainant called Respondent at his residence the following day of the second inspection to complain of his inappropriate behavior. (Tr. at 47, Ex. 27 call 391)

20. Notice of Hearing on this matter was received at the Respondent's last known address on March 1, 2010, by certified mail # 7006345000037803, signed by N. Kakar.

III. CONCLUSIONS OF LAW¹

A. Jurisdiction

On April 20, 2006, Complainant filed a complaint in writing with the Commission alleging that Respondent had committed unlawful real property transaction discriminatory practices on or about October 26, 2005. The complaint was filed timely within the 180 day requirement under H.R.S. §368-11 (c).

Respondent was the owner, operator, and manager of the subject property and subject rental unit located at 342 Lanakila Street, Kapa'a, Kauai, 96746 and was a person engaging in a real estate transaction within the meaning of H.R.S. §§515-2 and 515-3 and H.A.R. §§12-46-305 and 12-46-316, at all relevant times in this complaint.

Pursuant to H.R.S. § 515-2 the subject rental unit is a "housing accommodation" within the meaning of §515-2 and H.A.R. 12-46-302 and is not exempt under H.R.S. §515-4.

The Commission has jurisdiction to hear this complaint under H.R.S. §368-3 and H.R.S. §515-9.

B. Due Process

The hearing on this matter held March 17, 24, and 25, 2010, was held in accordance with H.R.S. Chapter 91, and was duly noticed under H.R.S. § and H.A.R. §12-46-45. Respondent did not participate in the hearing nor submit any memorandum nor respond to any of the orders issued by this Hearings Examiner. All notices and orders were sent via either regular mail or certified mail to the same last known address. Some communications also included copies via the last known e-mail address. Respondent did indicate actual notice evidenced by a phone call in December to the Director's attorney and an isolated phone call during a recess in the actual hearing. Repeated attempts to include Respondent at each reconvening by teleconference to Respondent's last known phone number went straight to voice mail, with no response.

I recommend the Commission find that Respondent was afforded due process to

¹ To the extent that the following conclusions of law also contain findings of fact, they shall be deemed findings of fact.

participate in the hearing on this matter.

C. Sexual Harassment in a Real Estate Transaction

H.R.S. §515-3 states in relevant part:

It is discriminatory practice for an owner or any other person engaging in a real estate transaction . . . because of sex . . .

- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction . . .

H.A.R. §12-46-305 states in relevant part:

It is discriminatory practice for an owner . . . because of person's protected basis: . . .

- (2) To discriminate in the terms, conditions, enjoyment, or privileges of a real estate transaction. . .

H.R.S. §515-3, prohibits housing practices that discriminate against people due to a protected basis. Complainant has alleged discrimination based on sex for both hostile environment sexual harassment (HESH) and quid pro quo sexual harassment in a real estate transaction. The application of sexual harassment to housing practices has no Hawai'i precedent.

i. Hostile Environment Sexual Harassment

Analogizing the current harassment issues to standards in the workplace for hostile environment sexual harassment the elements of a prima facie case are enumerated by the court in Arquero v. Hilton Hawai'ian Village, LLC, 104 Haw. 423 (2004).

[I]n order to establish a HESH claim, the claimant must show that: (1) he or she was subjected to sexual advances, requests for sexual favors, or other verbal or physical conduct or visual forms of harassment of a sexual nature; (2) the conduct was unwelcome; (3) the conduct was severe or pervasive; (4) the conduct had the purpose or effect of either: (a) unreasonably interfering with the claimant's work performance, or (b) creating an intimidating, hostile, or offensive work environment; (5) the claimant actually perceived the conduct as having such purpose or effect; and (6) the claimant's perception was objectively reasonable to a person of the claimant's gender in the same position as the claimant.⁵

Applying this standard to a real estate transaction, Executive Director has proved the first two elements beyond a preponderance of the evidence that Complainant was subjected to sexual advances, requests for sexual favors and both verbal conduct and visual forms of harassment of a

⁵ Arquero v. Hilton Hawai'ian village LLC, 104 Haw. 423, 428 (2004); Nelson v. University of Hawai'i, et al., 376, 390 (2001).

sexual nature that were unwelcome.

The third element, whether the conduct was severe or pervasive needs more examination. The conduct happened over the course of one visit to the Respondent's residence. In Argeuro, the Hawai'i Supreme Court recognized that one instance of physical touching could be sufficient to establish a claim. In this case we have no actual physical touching but a series of verbal and visual forms of harassment close in time. It is difficult to concur that this one-time event rises to the level of pervasive under this standard. Under the Fair Housing Act HESII claims have also been recognized as a basis for a Fair Housing Act discrimination claim⁶. The court also noted that employment discrimination cases provided helpful guidance. The court explained:

Applied to housing, a claim is actionable when the offensive behavior unreasonably interferes with use and enjoyment of the premises. The harassment must be 'sufficiently severe or pervasive' to alter the conditions of the housing arrangement ... It is not sufficient if the harassment is isolated or trivial.... "[C]asual or isolated manifestations of a discriminatory environment ... may not raise a cause of action." ... The offensive acts need not be purely sexual; it is sufficient that they would not have happened but for claimant's gender.⁷

The isolated incident on the second viewing of the subject rental unit is not sufficient to support a HESII claim.

ii. Quid Pro Quo Sexual Harassment.

The facts in this case also describe a situation where Complainant's submission to sexual conduct with the Respondent was a condition of the decision or to be a term of the rental agreement. With the knowledge that Complainant could only afford less than the asking price of the subject rental unit, Respondent, invited the Complainant back to view the subject rental unit, presumably to re-open negotiations for the subject rental unit. Although not overt, Respondent's physical and verbal conduct made it clear to the Complainant that if Complainant agreed to

⁶ Shellhammer v. Lewallen, 1 Fair Housing-Fair Lending Rptr. ¶ 15,472, (N.D. Ohio 1983), aff'd without opinion, 770 F.2d 167 (6th Cir. 1985), see also Honce v. Vigil, 1 F.3d 1085 (10th Cir.1993)

⁷ Honce at 1090.

sexual favors, the subject rental property could be hers.

H.R.S. §515-3, and H.A.R. §12-46-305 prohibits discriminatory practices for owners engaging in real estate transactions, specifically in the terms, conditions or in the furnishing of a facility.⁸ Under the Fair Housing Act it is also recognized that *quid pro quo* harassment occurs when housing benefits are explicitly or implicitly conditioned upon sexual favors.⁹ In Hlonce the court did not find quid pro quo harassment because the plaintiff failed to prove a causal connection to the eviction. Here Complainant has proved a causal connection.

After knowing that Complainant could not afford the proposed rent, Respondent sought out Complainant to come back and re-open terms of the subject rental unit. Respondent's statement to Complainant that "He could make it worth her while," along with the implicit sexual invitations on the bed and at the couch indicate that Respondent was modifying terms of the rent, which on the first visit had been firm. The offer of the modification in terms can reasonably be interpreted to be asking for a *quid pro quo* exchange. Complainant's testimony has substantial credibility in that Commission investigators identified other potential renters who had similar experiences with Respondent.

The adverse action that Complainant was deprived of because she did not acquiesce to Respondent's new terms was access to a potential home, the subject rental unit. When Respondent knew the financial restrictions imposed on Complainant's ability to pay, it is reasonable for Complainant to believe Respondent had made an adjustment to provide an affordable rental unit that would meet the eligibility of her Section 8 limitations. The fact that Respondent was not able to coerce Complainant into a prohibited *quid pro quo* arrangement does not release the Respondent from liability. Hawai'i law is clear on this point. The attempt to commit, directly or indirectly, a discriminatory practice is a discriminatory practice.¹⁰

D. LIABILITY

Under H.R.S. §515-3 and H.A.R. §12-46-305 is unlawful to discriminate in a real estate transaction against a person on a protected basis. The undisputed evidence shows that

⁸ H.R.S. §515-3(2), and H.A.R. §12-46-305(2).

⁹ Hlonce, at 1089, reviewing an employment *quid pro quo* standard in Hicks v. Gates Rubber Co., 833 F.2d 1406, to the housing situation.

¹⁰ H.R.S. §515-71 and H.A.R. §21-46-311.

Complainant was the victim of discrimination based on her sex when she refused to engage in a *quid pro quo* sexual harassment real estate transaction with Respondent. For these reasons I conclude that Respondent did attempt to engage in a prohibited *quid pro quo* sexual harassment in a real estate transaction in violation of H.R.S. §§515-3, 515-17, and H.A.R. 12-46-305, and 12-46-311.

E. REMEDIES

Both compensatory and punitive damages are authorized by law under H.R.S. § 368-17.

1. Compensatory damages.

Pursuant H.R.S. §§368-3(5), 368-17 (8), and 515-13 (b)(7), the Commission has the authority to award damages for an injury caused by the discriminatory practice, and costs including a reasonable attorney's fee. Unless greater damages are proven, damages may be assessed at \$500 for each violation.¹¹ Executive Director points to embarrassment, humiliation and emotional distress inflicted on the Complainant as a result of Respondent's acts of sexual harassment. It was not clear how this impacted Complainant's economic life. There was no specific evidence of a quantifiable injury or costs as a result of the discrimination identified and as such \$500 in compensable damages is awarded.

2. Punitive damages.

Punitive damages are assessed in addition to compensatory damages to punish a respondent for aggravated or outrageous misconduct and to deter the respondent and others from similar conduct in the future.¹² The Executive Director is required to show, by clear and convincing evidence, that Respondent acted wantonly, oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or that there has been some wilful misconduct or entire want of care which would raise the presumption of a conscious indifference to consequences.¹³ Respondent did not respond to the orders of the Hearings Examiner which raises a presumption of a conscious indifference to consequences and Respondents lack of gravity of the circumstances. Additionally, Respondent acted with such

¹¹ H.R.S. §515-13 (b) (7)

¹² Gould, v. Dr. Robert Simich et. al., Docket No. 950-12-B-SH (October 29, 1996); Masaki v. General Motors Corp., 71 Haw. 1, 6, 780 P.2d 566 (1989).

¹³ *Id.*

malice to attempt to deny allegations to the HCRC investigator by volunteering to send a photo of himself to convince the investigator that someone who looks like him would not ask for sex from someone who looked like Complainant. (Tr. 73-74; Ex. 21 and 22) In addition, investigators confirmed that other women had similar experiences with Respondent. (Ex. 17 and 18) It is recommended that Respondent pay punitive damages of \$5,000

3. Costs

H.R.S. §§368-3, and 515-13 provides for the recovery of costs including reasonable attorney fees. The Executive Director incurred direct costs planning and arranging for an oral deposition to be held by teleconference in Mission Viejo, California, when Respondent failed to appear as ordered by the Hearings Officer. These costs incurred by the Executive Director should be reimbursed by the Respondent.

4. Penalties

H.R.S. 368-5 provides:

“Whoever intentionally resists, prevents, impedes, or interferes with the commission or any of its authorized agents or representatives in the performance of duties pursuant to this chapter, or who in any manner intentionally violates an order of the commission, shall be fined not more than \$500, or imprisoned for not more than ninety days.”

This Hearings Examiner was appointed by the Commission and is its authorized agent. Respondent failed to comply with Hearings Examiner’s Order to Compel Discovery and Order Granting Executive Director’s Motion for Respondent’s Telephone Deposition where Respondent was ordered to appear and did not. It is recommended that a \$500 penalty be imposed on the Respondent.

5. Declaratory and Equitable Relief

The Executive Director requests that the Commission order Respondent to:

1. Immediately cease and desist from unlawful discriminatory practices on any protected basis, including sex, in any housing accommodation owned or managed by Respondent.
2. Immediately develop and implement a written anti-discrimination real property

transaction policy and procedures, including the protected bases of sex, for any housing accommodation owned or managed by Respondent and conduct employee, supervisory, and managerial training on these policies.

3. Post notices in a conspicuous place that the Commission may publish or cause to be published setting forth requirements for compliance with civil rights laws or other relevant information that the Commission determines necessary to explain those laws.
4. Issue a public apology to Complainant and have said apology published in at least one newspaper in the state of Hawaii with a general state-wide circulation, in such manner and for such time as the Commission may order, but not less than once in the Sunday edition and once in the following week.
5. Publish an educational advertisement about Hawaii's prohibitions of sex discrimination in real estate transactions about the Commission in at least one newspaper published in the state of Hawaii and having a general state-wide circulation, in such manner and for such time as the Commission may order, but not less than once in the Sunday edition and once in the following week.
6. Publish the results of the Commission's contested case hearing in a press statement provided by the Commission in at least one newspaper published in the state of Hawaii and having a general state-wide circulation, in such manner and for such time as the Commission may order, but not less than once in the Sunday edition and once in the following week.

Because Respondent now resides in California, I recommend that the Commission order all the equitable relief requests in the event Respondent returns to Hawaii to engage in further real estate transactions the people of Hawaii will be protected.

IV. RECOMMENDED ORDER

Based on the matters set forth above, I recommend that the Commission find and conclude that Respondent Michael Kakar violated H.R.S. § 515-3 and H.A.R. § 12-46-305 by subjecting Complainant Elaine M. Bowes to unlawful sexual harassment in a real estate transaction.

For the violation found above, I recommend that pursuant to H.R.S. § 368-17, the Commission should order:

1. Respondent to pay Complainant \$500 as damages in compensation for her emotional injuries caused by Respondent's sexual harassment in a real estate transaction.
2. Respondent to pay Complainant \$5,000 as punitive damages.
3. Respondent to pay Executive Director for costs incurred when he failed to appear at the teleconference in Mission Viejo, California.
4. Respondent to pay \$500 in penalties.
5. Respondent immediately cease and desist from unlawful discriminatory practices on any protected basis, including sex, in any housing accommodation owned or managed by Respondent in Hawaii.
6. Respondent immediately develop and implement a written anti-discrimination real property transaction policy and procedures, including the protected bases of sex, for any housing accommodation owned or managed by Respondent in Hawaii and conduct employee, supervisory, and managerial training on these policies.
7. Respondent to post notices in a conspicuous place that the Commission may publish or cause to be published setting forth requirements for compliance with civil rights laws or other relevant information that the Commission determines necessary to explain those laws.
8. Respondent issue a public apology to Complainant and have said apology published in at least one newspaper in the state of Hawaii with a general state-wide circulation, in such manner and for such time as the Commission may order, but not less than once in the Sunday edition and once in the following week.
9. Respondent publish an educational advertisement about Hawaii's prohibitions of sex discrimination in real estate transactions about the Commission in at least one newspaper published in the state of Hawaii and having a general state-wide circulation, in such manner

and for such time as the Commission may order, but not less than once in the Sunday edition and once in the following week.

10. Respondent publish the results of the Commission's contested case hearing in a press statement provided by the Commission in at least one newspaper published in the state of Hawaii and having a general state-wide circulation, in such manner and for such time as the Commission may order, but not less than once in the Sunday edition and once in the following week.

DATED: Honolulu, Hawaii May 24, 2010.

HAWAII CIVIL RIGHTS COMMISSION

A handwritten signature in black ink that reads "Pamela Martin". The signature is written in a cursive, flowing style.

PAMELA MARTIN

Hearings Examiner

APPENDIX A

On April 20, 2006, Complainant Elaine M. Bowes filed a complaint with the Hawai'i Civil Rights Commission (Commission) alleging that Respondent Michael Kakar had committed unlawful real property transaction discriminatory practices against her on the basis of her sex when she attempted to rent Respondent's rental unit at 341 Lanakila St., Kapaa, Hawai'i.

The complaint was docketed for hearing on September 24, 2009, and a Notice of Docketing Of Complaint was issued.

The Executive Director filed its Scheduling Conference Statement on October 5, 2009. A scheduling conference was held on October 21, 2009 and Scheduling Conference Order issued the same day.

There was no response from several requests for discovery filed December 18, 2009, including Executive Director's First Request for Discovery to Respondent; Executive Director's First Interrogatories to Respondent; Executive Director's First Document Request to Respondent, and Executive Director's Request for Disclosure Pursuant to H.A.R. §12-46-41 and Executive Director's Notice of Taking Deposition Upon Oral Examination, and Executive Director's Amended Notice of Taking Deposition Upon Oral Examination filed on December 21, 2009.

Upon Executive Director's Motion For Order of Respondent's Telephone Deposition filed January 6, 2010, Hearings Examiner granted Executive Director's Motion for Respondent's Telephone Deposition. Respondent failed to appear for Oral Deposition at the ordered time and location and provided no reason for his absence.

A Notice of Pre-Hearing Conference and Order was filed on January 28, 2010 for a February 23, 2010 pre-hearing conference.

Hearings Examiner's Order Granting Executive Director's Motion to Compel and Continue Discovery was issued February 10, 2010, extending the Discovery cut-off date was continued to February 16, 2010.

Executive Director's Motion to Continue Motions and Conference filed February 3, 2010, was partially granted in extending the deadline for submission of pre-hearing conference

statements but denied as to the extension of the motions cut-off date and continuance of the pre-hearing conference in Hearings Officer Order Granting and Denying in Part Executive Director's Motion to Continue Motions and Conference filed February 11, 2010.

No response or objection to any motion filed by Executive Director was received from Respondent. Certificate of Service on documents indicate delivery by U.S. Postal Service at Respondent's last known address.

On February 19, 2010, the Executive Director filed their pre-hearing conference statement. The Respondent failed to file a pre-hearing conference statement. On February 23, 2010, the pre-hearing conference was held which the Respondent did not answer the phone when contacted at the last known phone number and did not participate in the conference.

Pre-hearing Conference Order and Notice of the Hearing was filed on February 25, 2010 and Return Receipt Notice indicated Delivery on March 1, 2010, signed by N. Kakar at the last known address for Respondent.

Pursuant to H.R.S. Chapters 91 and 368, the contested case hearing on this matter was held March 16, 17, and 24, 2010. Several attempts were made to contact the Respondent during the hearing to include Respondent via teleconference. Respondent did return a call to the Hawai'i Civil Rights Commission office while the hearing was in recess but did not respond when attempt to contact Respondent was made when the hearing was in session.

On April 10, 2010, Executive Director filed post-hearing briefs.